

### **REMARKS**

This Amendment is responsive to the final Office Action mailed February 1, 2008 and the Advisory Action and Notice of Non-Compliant Amendment mailed April 16, 2008. At the time of the Office Action, claims 37-65 were pending, with claim 52 withdrawn from consideration.

With this Amendment, claim 38 has been cancelled, without prejudice. In addition, claims 63-65 have been canceled and re-presented as new claims 66-68 to address the non-compliant amendment issue. Claims 37, 39-62 and 66-68 are pending.

#### **35 U.S.C. §102 Rejection**

Claims 37-51 and 53-62 stand rejected under 35 U.S.C. §102(b) as being anticipated by Eggers et al., U.S. Patent No. 6,032,674.

Applicant respectfully disagrees with the rejection of claims 37-51 and 53-62 as being anticipated by Eggers et al., U.S. Patent No. 6,032,674. However, notwithstanding the previously noted deficiencies of the rejection in prior responses, Applicant has elected to amend the claims to expedite prosecution and further distinguish from the art, thus rendering any further discussion of the rejection against the claims moot.

In particular, claim 37 is amended to incorporate subject matter from cancelled claim 38. Claim 37 recites, among other things, a dimensional change sensor configured to move relative to the dimensional change of the tissue.

The ultrasonic transducer of Eggers et al. determines the thickness of the heart wall by measuring the delay time for reflected ultrasound signal to return from the boundary of the heart wall at the surface of epicardium. The delay time is then translated into a thickness of the heart wall. (Col. 23, l. 19-28). As shown in the figures, the sensor is static and is not configured to move relative to the dimensional change of the tissue.

At least in view of the foregoing remarks, it is respectfully submitted that claims 37, 39-51 and 53-62 are not anticipated by Eggers et al. The conditions of patentability have been

satisfied, and the rejection of claims 37, 39-51 and 53-62 should be withdrawn upon reconsideration.

**35 U.S.C. §103 Rejection**

Claims 63-65 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bommannan et al., U.S. Patent No. 6,775,575, in view of Mulier et al., U.S. Patent No. 6,096,037.

Preliminarily, it is noted that claims 63-65 have been cancelled and re-presented as new claims 66-68.

Applicant respectfully disagrees with the Examiner's rejection of claims 63-65 as being unpatentable over Bommannan et al., U.S. Patent No. 6,775,575, in view of Mulier et al., U.S. Patent No. 6,096,037. However, notwithstanding the previously noted deficiencies of the rejection in prior responses, Applicant has elected to amend the claims to expedite prosecution and further distinguish from the art, thus rendering any further discussion of the rejection against the claims moot.

In particular, Applicant has amended claims 63-65 (now claims 66-68) to recite, among other things, a dimensional change sensor configured to move relative to the dimensional change of the tissue.

Nothing in Bommannan et al. teaches or suggests an invention as claimed by the Applicant. Furthermore, neither Eggers et al nor Mulier et al. provides the teachings missing from the primary reference Bommannan et al. to maintain the rejection.

Regardless of the teachings of Bommannan et al., Applicant submits an affidavit under 37 C.F.R. §1.131(a) stating that the subject matter of the claimed invention was conceived prior to the earliest possible effective prior art date for Bommannan et al., February 26, 2001. As such, Bommannan et al. should be removed from consideration as prior art.

In view of the foregoing remarks, it is respectfully submitted that claims 63-65 (now claims 66-68) are not unpatentable over Bommannan et al., in view of Mulier et al. The

conditions of patentability have been satisfied, and the rejection of claims 63-65 (now claims 66-68) should be withdrawn upon reconsideration.

**Summary**

The Applicant respectfully submits that, in light of the foregoing amendments and remarks, and having dealt with all the rejections raised by the Examiner, the claims are in order for allowance. A Notice of Allowance is respectfully requested.

The Examiner is invited to contact the undersigned representative if it will facilitate prosecution of this application.

Respectfully submitted,  
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